February 20, 2009

SENATE BILL No. 559

DIGEST OF SB 559 (Updated February 18, 2009 12:26 pm - DI 102)

Citations Affected: IC 22-3; noncode.

Synopsis: Worker's compensation matters. Requires the worker's compensation board (board) to establish a medical utilization review procedure for medical treatment provided to or proposed for work related injuries and illnesses. Requires a health care provider to file a claim for payment with the board not later than two years after the last date the provider provided services to an injured or disabled employee. Establishes a $60 filing fee that must accompany the claim for payment. Requires that billing review services be certified by the board. Increases from $1,000 to $5,000 the maximum civil penalty that may be assessed against a billing review service that does not comply with the statutory billing review standards. Allows the second injury fund to be used to pay certain fund liabilities. Authorizes the board to resolve claims using mediation. Increases civil penalties for failure to: (1) post certain notices; (2) file certain records; and (3) determine liability for claims in a timely manner. Permits the board to request evidence of worker's compensation and occupational diseases compensation coverage from an employer. Establishes civil penalties for an employer's failure to provide proof of coverage. Allows the board, after notice and a hearing, to post on the board's web site the name of an employer who fails or refuses to provide proof of coverage. Requires that civil penalties be deposited in the worker's compensation supplemental administrative fund, instead of the state general fund. Amends the definition of "pecuniary liability" applying to the responsibility of an employer or insurance carrier to recognize that the charge for services provided by a medical services facility may be determined using the Medicare resource based relative value scale.

Effective: Upon passage; July 1, 2009; January 1, 2010.

Kruse, Mishler, Tallian

January 20, 2009, read first time and referred to Committee on Pensions and Labor.
February 19, 2009, amended, reported favorably — Do Pass.

February 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 559

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-3-2-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22. (a) Each employer subject to IC 22-3-2 through IC 22-3-6 shall post a notice in the employer's place of business to inform the employees that their employment is covered by worker's compensation. The notice must also contain the name, address, and telephone number of the employer's insurance carrier or the person responsible for administering the employer's worker's compensation claims if the employer is self insured.

(b) The notice required under this section must be in a form approved by the board and shall be posted at a conspicuous location at the employer's place of business to provide reasonable notice to all employees. If the employer is required by federal law or regulation to post a notice for the employer's employees, the notice required under this section must be posted in the same location or locations where the notice required by federal law or regulation is posted.

(c) An employer who fails to comply with this section is subject to

a civil penalty ~~of fifty dollars ($50), to be assessed and collected by the board. Civil penalties collected under this section shall be deposited in the state general fund.~~ **under IC 22-3-4-15.**

SECTION 2. IC 22-3-3-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.5. (a) The board shall establish by rule, not later than July 1, 2010, a process by which an insurance carrier, a third party administrator, an employer, or an employee may request a review of the reasonableness or necessity of medical treatment provided to or proposed for injuries and illnesses of an employee under IC 22-3-2 through IC 22-3-7.**

(b) A review conducted under this section determines only the reasonableness or necessity of the treatment under review and may not determine any of the following:

(1) The causal relationship between the treatment under review and the employee's work related injury.

(2) Whether the employee is or remains temporarily or permanently totally or partially disabled.

(3) The reasonableness of the fees charged by a health care provider.

(4) The appropriateness of the diagnostic or procedural codes used by the health care provider for billing purposes.

(5) Other issues that do not directly relate to the reasonableness or necessity of the treatment under review.

SECTION 3. IC 22-3-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **(a)** The pecuniary liability of the employer for medical, surgical, hospital and nurse service herein required shall be limited to such charges as prevail as provided under IC 22-3-6-1(j), in the same community (as defined in IC 22-3-6-1(h)) for a like service or product to injured persons.

(b) The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under IC 22-3-3-4.

(c) The right to order payment for all services provided under IC 22-3-2 through IC 22-3-6 is solely with the board.

(d) All claims by a health care provider for payment for services are against the employer and the employer's insurance carrier, if any, and must be made with the board under IC 22-3-2 through IC 22-3-6. **A health care provider must file a claim for payment with the board not later than two (2) years after the last date the provider provides services to an injured employee. A filing fee of sixty dollars ($60) must accompany each application for payment.**

(e) The worker's compensation board may withhold the approval of the fees of the attending physician in a case until the attending physician files a report with the worker's compensation board on the form prescribed by the board.

SECTION 4. IC 22-3-3-5.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5.2. **(a) Before providing services under this section, an entity must be certified as a billing review service by the worker's compensation board under IC 22-3-13.**

~~(a)~~ **(b)** A billing review service shall adhere to the following requirements to determine the pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under worker's compensation:

(1) The formation of a billing review standard, and any subsequent analysis or revision of the standard, must use data that is based on the medical service provider billing charges as submitted to the employer and the employer's insurance carrier from the same community. This subdivision does not apply when a unique or specialized service or product does not have sufficient comparative data to allow for a reasonable comparison.

(2) Data used to determine pecuniary liability must be compiled on or before June 30 and December 31 of each year.

(3) Billing review standards must be revised for prospective future payments of medical service provider bills to provide for payment of the charges at a rate not more than the charges made by eighty percent (80%) of the medical service providers during the prior six (6) months within the same community. The data used to perform the analysis and revision of the billing review standards may not be more than two (2) years old and must be periodically updated by a representative inflationary or deflationary factor. Reimbursement for these charges may not exceed the actual charge invoiced by the medical service provider.

(4) The billing review standard shall include the billing charges of all hospitals in the applicable community for the service or product.

~~(b)~~ **(c)** A medical service provider may request an explanation from a billing review service if the medical service provider's bill has been reduced as a result of application of the eightieth percentile or of a Current Procedural Terminology (CPT) coding change. The request must be made not later than sixty (60) days after receipt of the notice of the reduction. If a request is made, the billing review service must

provide:

(1) the name of the billing review service used to make the reduction;

(2) the dollar amount of the reduction;

(3) the dollar amount of the medical service at the eightieth percentile; and

(4) in the case of a CPT coding change, the basis upon which the change was made;

not later than thirty (30) days after the date of the request.

~~(c)~~ **(d)** If after a hearing the worker's compensation board finds that a billing review service used a billing review standard that did not comply with subsection ~~(a)(1)~~ **(b)(1)** through ~~(a)(4)~~ **(b)(4)** in determining the pecuniary liability of an employer or an employer's insurance carrier for a health care provider's charge for services or products covered under worker's compensation, the worker's compensation board may assess a civil penalty against the billing review service in an amount not less than one hundred dollars ($100) and not more than ~~one~~ **five** thousand dollars ~~($1,000).~~ **($5,000).**

SECTION 5. IC 22-3-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) Compensation shall be allowed on account of injuries producing only temporary total disability to work or temporary partial disability to work beginning with the eighth ~~(8th)~~ day of such disability except for medical benefits provided in section 4 of the chapter. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(b) The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed injury. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the

determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

(1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;

(2) the status of the investigation on the date the petition is filed;

(3) the facts or circumstances that are necessary to make a determination; and

(4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty ~~of fifty dollars ($50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.~~ **under IC 22-3-4-15.**

(c) Once begun, temporary total disability benefits may not be terminated by the employer unless:

(1) the employee has returned to any employment;

(2) the employee has died;

(3) the employee has refused to undergo a medical examination under section 6 of this chapter or has refused to accept suitable employment under section 11 of this chapter;

(4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowed under section 22 of this chapter; or

(5) the employee is unable or unavailable to work for reasons unrelated to the compensable injury.

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means, and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of

the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under IC 22-3-4-5.

(d) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(e) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under section 10 of this chapter and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

SECTION 6. IC 22-3-3-13, AS AMENDED BY P.L.173-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause, had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of, another such member or eye, the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under section 4(e) of this chapter, continue to receive compensation in a timely manner for a reasonable

prospective period, the board shall send notice not later than November 1 in any year to:

(1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and

(2) each employer carrying the employer's own risk;

stating that an assessment is necessary. Not later than January 31 of the following year, each entity identified in subdivisions (1) and (2) shall send to the board a statement of total paid losses and premiums (as defined in subsection (d)(4)) paid by employers during the previous calendar year. The board may conduct an assessment under this subsection not more than one (1) time annually. The total amount of the assessment may not exceed two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. The board shall assess a penalty in the amount of ten percent (10%) of the amount owed if payment is not made under this section within thirty (30) days from the date set by the board. If the amount to the credit of the second injury fund on or before November 1 of any year exceeds one hundred thirty-five percent (135%) of the previous year's disbursements, the assessment allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before November 1 of any year the amount to the credit of the fund is less than one hundred thirty-five percent (135%) of the previous year's disbursements, the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment.

(d) The board shall assess all employers for the liabilities, including administrative expenses, of the second injury fund. The assessment also must provide for the repayment of all loans made to the second injury fund for the purpose of paying valid claims. The following applies to assessments under this subsection:

(1) The portion of the total amount that must be collected from self-insured employers equals:

(A) the total amount of the assessment as determined by the board; multiplied by

(B) the quotient of:

(i) the total paid losses on behalf of all self-insured employers during the preceding calendar year; divided by

(ii) the total paid losses on behalf of all self-insured employers and insured employers during the preceding calendar year.

(2) The portion of the total amount that must be collected from insured employers equals:

(A) the total amount of the assessment as determined by the board; multiplied by

(B) the quotient of:

(i) the total paid losses on behalf of all insured employers during the preceding calendar year; divided by

(ii) the total paid losses on behalf of all self-insured employers and insured employers during the preceding calendar year.

(3) The total amount of insured employer assessments under subdivision (2) must be be collected by the insured employers' worker's compensation insurers. The amount of employer assessments each insurer shall collect equals:

(A) the total amount of assessments allocated to insured employers under subdivision (2); multiplied by

(B) the quotient of:

(i) the worker's compensation premiums paid by employers to the carrier during the preceding calendar year; divided by

(ii) the worker's compensation premiums paid by employers to all carriers during the preceding calendar year.

(4) For purposes of the computation made under subdivision (3), "premium" means the direct written premium.

(5) The amount of the assessment for each self-insured employer equals:

(A) the total amount of assessments allocated to self-insured employers under subdivision (1); multiplied by

(B) the quotient of:

(i) the paid losses attributable to the self-insured employer during the preceding calendar year; divided by

(ii) paid losses attributable to all self-insured employers during the preceding calendar year.

An employer that has ceased to be a self-insurer continues to be liable for prorated assessments based on paid losses made by the employer in the preceding calendar year during the period that the employer was self-insured.

(e) The board may employ a qualified employee or enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than December 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(f) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of insurance producer commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(g) The sums shall be paid by the board to the treasurer of state, to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of **fund liabilities described in subsection (c) and** awards of compensation ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(h) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

(1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or

(2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by this

section, as follows under subsection (i).

(i) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(j) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

(k) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

SECTION 7. IC 22-3-4-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.5. (a) In addition to any other method available to the board to resolve a claim for compensation under IC 22-3-2 through IC 22-3-7, the board may, with the consent of all parties, order the mediation of the claim.**

(b) The board shall establish by rule a schedule of fees and charges for a mediation conducted to resolve a claim for compensation under IC 22-3-2 through IC 22-3-7.

SECTION 8. IC 22-3-4-13, AS AMENDED BY P.L.1-2007, SECTION 159, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) Every employer shall keep a record of all injuries, fatal or otherwise, received by or claimed to

have been received by the employer's employees in the course of their employment. Within seven (7) days after the occurrence and knowledge thereof, as provided in IC 22-3-3-1, of any injury to an employee causing death or absence from work for more than one (1) day, a report thereof shall be made in writing and mailed to the employer's insurance carrier or, if the employer is self insured, delivered to the worker's compensation board in the manner provided in subsections (b) and (c). The insurance carrier shall deliver the report to the worker's compensation board in the manner provided in subsections (b) and (c) not later than seven (7) days after receipt of the report or fourteen (14) days after the employer's knowledge of the injury, whichever is later. An employer or insurance carrier that fails to comply with this subsection is subject to a civil penalty ~~of fifty dollars ($50), to be assessed and collected by the board. Civil penalties collected under this section shall be deposited in the state general fund.~~ **under section 15 of this chapter.**

(b) All insurance carriers, companies who carry risk without insurance, and third party administrators reporting accident information to the board in compliance with subsection (a) shall

~~(1)~~ report the information using electronic data interchange standards prescribed by the board. ~~no later than June 30, 1999, or (2) in the alternative, the reporting entity shall have an implementation plan approved by the board no later than June 30, 2000, that provides for the ability to report the information using electronic data interchange standards prescribed by the board no later than December 31, 2000.~~

~~Prior to the June 30, 2000, and December 31, 2000, deadlines, the reporting entity may continue to report accidents to the board by mail in compliance with subsection (a).~~

(c) The report shall contain the name, nature, and location of the business of the employer, the name, age, sex, wages, occupation of the injured employee, the date and hour of the accident causing the alleged injury, the nature and cause of the injury, and such other information as may be required by the board.

(d) A person who violates any provision of this article, except IC 22-3-5-1, IC 22-3-7-34(b), or IC 22-3-7-34(c), commits a Class C infraction. A person who violates IC 22-3-5-1, IC 22-3-7-34(b), or IC 22-3-7-34(c) commits a Class A infraction. The worker's compensation board in the name of the state may seek relief from any court of competent jurisdiction to enjoin any violation of this article.

(e) The venue of all criminal actions under this section lies in the county in which the employee was injured. The prosecuting attorney of

the county shall prosecute all such violations upon written request of the worker's compensation board. Such violations shall be prosecuted in the name of the state.

(f) In an action before the board against an employer who at the time of the injury to or occupational disease of an employee had failed to comply with IC 22-3-5-1, IC 22-3-7-34(b), or IC 22-3-7-34(c), the board may award to the employee or the dependents of a deceased employee:

(1) compensation not to exceed double the compensation provided by this article;

(2) medical expenses; and

(3) reasonable attorney fees in addition to the compensation and medical expenses.

(g) In an action under subsection ~~(c)~~ **(d)** the court may:

(1) order the employer to cease doing business in Indiana until the employer furnishes proof of insurance as required by IC 22-3-5-1 and IC 22-3-7-34(b) or IC 22-3-7-34(c);

(2) require satisfactory proof of the employer's financial ability to pay any compensation or medical expenses in the amount and manner and when due as provided for in IC 22-3, for any injuries which occurred during any period of noncompliance; and

(3) require the employer to deposit with the worker's compensation board an acceptable security, indemnity, or bond to secure the payment of such compensation and medical expense liabilities.

(h) The penalty provisions of subsection ~~(c)~~ **(d)** shall apply only to the employer and shall not apply for a failure to exact a certificate of insurance under IC 22-3-2-14 or IC 22-3-7-34(i) or IC 22-3-7-34(j).

SECTION 9. IC 22-3-4-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 15. (a) In addition to any other remedy available to the board under this article or at law, the board may, after notice and a hearing, assess a civil penalty under this section for any of the following:**

(1) Failure to post a notice required by IC 22-3-2-22.

(2) Failure to determine employer liability for a claim as required by IC 22-3-3-7 or IC 22-3-7-16.

(3) Failure to file an injury record with the board as required by section 13 of this chapter or to file a report of a disablement by occupational disease as required by IC 22-3-7-37.

(b) For the first violation of an offense listed in subsection (a),

the board may assess a civil penalty not to exceed fifty dollars ($50).

(c) For the second unrelated violation of the same offense listed in subsection (a), the board may assess a civil penalty not to exceed one hundred fifty dollars ($150).

(d) For the third or subsequent unrelated violation of the same offense listed in subsection (a), the board may assess a civil penalty not to exceed three hundred dollars ($300).

(e) Civil penalties collected under this section shall be deposited in the worker's compensation supplemental administrative fund established by IC 22-3-5-6.

SECTION 10. IC 22-3-5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.5. (a) The worker's compensation board is entitled to request that an employer provide the board with current proof of compliance with section 2 of this chapter.**

(b) If an employer fails or refuses to provide current proof of compliance by the seventh day after the employer receives the board's request under subsection (a), the board may assess a civil penalty against the employer not to exceed one hundred fifty dollars ($150).

(c) If an employer fails or refuses to provide a current proof of compliance by the fourteenth day after the date the employer receives the board's request under subsection (a), the board may assess a civil penalty not to exceed three hundred dollars ($300).

(d) If an employer fails or refuses to provide a current proof of compliance by the twenty-fifth day after the date the employer receives the board's request under subsection (a), the board may:

(1) assess a civil penalty not to exceed one thousand dollars ($1,000); and

(2) after notice to the employer and a hearing, order that the noncompliant employer's name be listed on the board's Internet web site.

(e) The civil penalties provided for in this section are cumulative.

(f) Civil penalties collected under this section shall be deposited in the worker's compensation supplemental administrative fund established by section 6 of this chapter.

SECTION 11. IC 22-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) The worker's compensation supplemental administrative fund is established for the purpose of carrying out the administrative purposes and functions of

the worker's compensation board.

(b) The fund consists of:

(1) fees collected from employers under sections 1 through 2 of this chapter; ~~and from~~

(2) fees collected under IC 22-3-2-14.5 and IC 22-3-7-34.5;

(3) civil penalties assessed under IC 22-3-4-15, section 2.5 of this chapter, IC 22-3-7-34.3, and IC 22-3-13-5; and

(4) fees paid to the apply for or renew a certificate of registration under IC 22-3-13.

(c) The fund shall be administered by the worker's compensation board. Money in the fund is annually appropriated to the worker's compensation board and shall be used for all expenses incurred by the worker's compensation board.

~~(b)~~ **(d)** The money in the fund is not to be used to replace funds otherwise appropriated to the board. Money in the fund at the end of the state fiscal year does not revert to the state general fund.

SECTION 12. IC 22-3-6-1, AS AMENDED BY P.L.1-2006, SECTION 339, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5. The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time

basis.

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a municipal corporation or governmental subdivision or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation under IC 22-3-2 through IC 22-3-6.

(2) An executive officer of a municipal corporation or other governmental subdivision or of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance

carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376 to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the

extent set forth in IC 22-3-2-2.5.

(11) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of IC 22-3-2 through IC 22-3-6.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-33-3-35, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-37-2-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured

employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of the employee's earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-37-2-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's

worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Medical services facility" means a hospital, clinic, surgery center, nursing home, rehabilitation center, or other health care facility that provides services, treatment, or supplies under IC 22-3-2 through IC 22-3-6.

~~(j)~~ **(k)** "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 **determined using one (1) of the following:**

(1) Except as provided in subdivision (2), for services or products provided in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

(2) For the coding, billing, reporting, and reimbursement of medical services provided by a medical services facility, the Medicare resource based relative value scale, including

Medicare's coding, billing, and reporting payment policies, approved by the worker's compensation board and in effect on the date a service is provided.

SECTION 13. IC 22-3-7-9, AS AMENDED BY P.L.201-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of sections 6 and 33 of this chapter. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of sections 6 and 33 of this chapter. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this chapter. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

(b) As used in this chapter, "employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter the following apply:

(1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes the employee's legal representative, dependents, and other persons to whom compensation may be payable.

(2) An owner of a sole proprietorship may elect to include the owner as an employee under this chapter if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier

and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under section 34.5 of this chapter.

(3) A partner in a partnership may elect to include the partner as an employee under this chapter if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under section 34.5 of this chapter.

(4) Real estate professionals are not employees under this chapter if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work

Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(8) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of this chapter.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. A minor employee shall be considered as being of full age for all purposes of this chapter. However, if the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provisions of this subsection prescribing double the amount otherwise recoverable do not apply. The rights and remedies granted to a minor under this chapter on account of disease shall exclude all rights and remedies of the minor, ~~his~~ **the minor's** parents, ~~his~~ **the minor's** personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to casual laborers as defined in subsection (b), nor to farm or agricultural employees, nor to household employees, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to these employees. Also, this chapter does not apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

(e) As used in this chapter, "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the

occupational disease by the employer from whom the employee claims compensation or equal wages in other suitable employment, and "disability" means the state of being so incapacitated.

(f) For the purposes of this chapter, no compensation shall be payable for or on account of any occupational diseases unless disablement, as defined in subsection (e), occurs within two (2) years after the last day of the last exposure to the hazards of the disease except for the following:

(1) In all cases of occupational diseases caused by the inhalation of silica dust or coal dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease.

(2) In all cases of occupational disease caused by the exposure to radiation, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within two (2) years from the date on which the employee had knowledge of the nature of the employee's occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to the employee's employment.

(3) In all cases of occupational diseases caused by the inhalation of asbestos dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease if the last day of the last exposure was before July 1, 1985.

(4) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1985, and before July 1, 1988, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within twenty (20) years after the last day of the last exposure.

(5) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1988, no compensation shall be payable unless disablement (as defined in subsection (e)) occurs within thirty-five (35) years after the last day of the last exposure.

(g) For the purposes of this chapter, no compensation shall be payable for or on account of death resulting from any occupational disease unless death occurs within two (2) years after the date of disablement. However, this subsection does not bar compensation for death:

(1) where death occurs during the pendency of a claim filed by an

employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or

(2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

(j) As used in this chapter, "community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) "Medical services facility" means a hospital, clinic, surgery center, nursing home, rehabilitation center, or other health care facility that provides services, treatment, or supplies under this chapter.

~~(l)~~ **(m)** As used in this chapter, "pecuniary liability" means the

responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter **determined using one (1) of the following:**

(1) Except as provided in subdivision (2), for services or products provided in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

(2) For the coding, billing, reporting, and reimbursement of medical services provided by a medical services facility, the Medicare resource based relative value scale, including Medicare's coding, billing, and reporting payment policies, approved by the worker's compensation board and in effect on the date a service is provided.

SECTION 14. IC 22-3-7-16, AS AMENDED BY P.L.134-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) Compensation shall be allowed on account of disablement from occupational disease resulting in only temporary total disability to work or temporary partial disability to work beginning with the eighth day of such disability except for the medical benefits provided for in section 17 of this chapter. Compensation shall be allowed for the first seven (7) calendar days only as provided in this section. The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed disablement. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the

filing of a petition by the employer or the employer's insurance carrier that sets forth:

(1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;

(2) the status of the investigation on the date the petition is filed;

(3) the facts or circumstances that are necessary to make a determination; and

(4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty ~~of fifty dollars ($50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.~~ **under IC 22-3-4-15.**

(b) Once begun, temporary total disability benefits may not be terminated by the employer unless:

(1) the employee has returned to work;

(2) the employee has died;

(3) the employee has refused to undergo a medical examination under section 20 of this chapter;

(4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowable under section 19 of this chapter; or

(5) the employee is unable or unavailable to work for reasons unrelated to the compensable disease.

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits, and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily

disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under section 27 of this chapter.

(c) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(d) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under this section and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

(e) For disablements occurring on and after July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during the temporary total disability weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(f) For disablements occurring on and after July 1, 1974, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between the employee's average weekly wages, as defined in section 19 of this chapter, and the weekly wages at which the employee is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

(g) For disabilities occurring on and after July 1, 1979, and before

July 1, 1988, from occupational disease in the schedule set forth in subsection (j), the employee shall receive in addition to disability benefits, not exceeding fifty-two (52) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars ($125) average weekly wages, for the period stated for the disabilities.

(h) For disabilities occurring on and after July 1, 1988, and before July 1, 1989, from occupational disease in the schedule set forth in subsection (j), the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars ($166) average weekly wages, for the period stated for the disabilities.

(i) For disabilities occurring on and after July 1, 1989, and before July 1, 1990, from occupational disease in the schedule set forth in subsection (j), the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars ($183) average weekly wages, for the period stated for the disabilities.

(j) For disabilities occurring on and after July 1, 1990, and before July 1, 1991, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars ($200) average weekly wages, for the period stated for the disabilities.

(1) Amputations: For the loss by separation, of the thumb, sixty (60) weeks; of the index finger, forty (40) weeks; of the second finger, thirty-five (35) weeks; of the third or ring finger, thirty (30) weeks; of the fourth or little finger, twenty (20) weeks; of the hand by separation below the elbow, two hundred (200) weeks; of the arm above the elbow joint, two hundred fifty (250) weeks; of the big toe, sixty (60) weeks; of the second toe, thirty (30) weeks; of the third toe, twenty (20) weeks; of the fourth toe, fifteen (15) weeks; of the fifth or little toe, ten (10) weeks; of the foot below the knee joint, one hundred fifty (150) weeks; and of the leg above the knee joint, two hundred (200) weeks. The loss of more than one (1) phalange of a thumb or toe shall be considered as the

loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the thumb or toe and compensation shall be paid for one-half (1/2) of the period for the loss of the entire thumb or toe. The loss of not more than two (2) phalanges of a finger shall be considered as the loss of one-half (1/2) the finger and compensation shall be paid for one-half (1/2) of the period for the loss of the entire finger.

(2) Loss of Use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange and the compensation shall be paid for the same period as for the loss thereof by separation.

(3) Partial Loss of Use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(4) For disablements for occupational disease resulting in total permanent disability, five hundred (500) weeks.

(5) For the loss of both hands, or both feet, or the total sight of both eyes, or any two (2) of such losses resulting from the same disablement by occupational disease, five hundred (500) weeks.

(6) For the permanent and complete loss of vision by enucleation of an eye or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred fifty (150) weeks, and for any other permanent reduction of the sight of an eye, compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(7) For the permanent and complete loss of hearing, two hundred (200) weeks.

(8) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation

board, not exceeding five hundred (500) weeks.

(9) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this paragraph where compensation shall be payable under subdivisions (1) through (8). Where compensation for temporary total disability has been paid, this amount of compensation shall be deducted from any compensation due for permanent disfigurement.

(k) With respect to disablements in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the disablement, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the disablement occurred:

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; of separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations occurring on or after July 1, 1997: For the loss by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, the dollar values per degree applying on the date of the injury as described in subsection (l) shall be multiplied by two (2). However, the doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(6) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(7) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(8) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(9) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(10) For disablements resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(11) For any permanent reduction of the sight of an eye less than

a total loss as specified in subdivision (5), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed an additional fifty percent (50%).

(12) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subdivision (6), compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(13) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board, not exceeding one hundred (100) degrees of permanent impairment.

(14) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

(l) With respect to disablements occurring on and after July 1, 1991, compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the disablement determined under subsection (k) and the following:

(1) With respect to disablements occurring on and after July 1, 1991, and before July 1, 1992, for each degree of permanent impairment from one (1) to thirty-five (35), five hundred dollars ($500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), nine hundred dollars ($900) per degree; for each degree of permanent impairment above fifty (50), one thousand five hundred dollars ($1,500) per degree.

(2) With respect to disablements occurring on and after July 1, 1992, and before July 1, 1993, for each degree of permanent impairment from one (1) to twenty (20), five hundred dollars ($500) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), eight hundred dollars ($800) per degree; for each degree of permanent impairment from

thirty-six (36) to fifty (50), one thousand three hundred dollars ($1,300) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars ($1,700) per degree.

(3) With respect to disablements occurring on and after July 1, 1993, and before July 1, 1997, for each degree of permanent impairment from one (1) to ten (10), five hundred dollars ($500) per degree; for each degree of permanent impairment from eleven (11) to twenty (20), seven hundred dollars ($700) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), one thousand dollars ($1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars ($1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars ($1,700) per degree.

(4) With respect to disablements occurring on and after July 1, 1997, and before July 1, 1998, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars ($750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars ($1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars ($1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars ($1,700) per degree.

(5) With respect to disablements occurring on and after July 1, 1998, and before July 1, 1999, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars ($750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars ($1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars ($1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars ($1,700) per degree.

(6) With respect to disablements occurring on and after July 1, 1999, and before July 1, 2000, for each degree of permanent impairment from one (1) to ten (10), nine hundred dollars ($900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand one hundred dollars ($1,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand six hundred dollars ($1,600) per degree; for each degree of permanent impairment above fifty (50), two thousand dollars ($2,000) per degree.

(7) With respect to disablements occurring on and after July 1, 2000, and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars ($1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars ($1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars ($2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred fifty dollars ($2,500) per degree.

(8) With respect to disablements occurring on and after July 1, 2001, and before July 1, 2007, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars ($1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars ($1,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred dollars ($2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars ($3,000) per degree.

(9) With respect to disablements occurring on and after July 1, 2007, and before July 1, 2008, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred forty dollars ($1,340) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred forty-five dollars ($1,545) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred seventy-five dollars ($2,475) per degree; for each degree of permanent impairment above fifty (50), three thousand one hundred fifty dollars ($3,150) per degree.

(10) With respect to disablements occurring on and after July 1, 2008, and before July 1, 2009, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred sixty-five dollars ($1,365) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred seventy dollars ($1,570) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand five hundred twenty-five dollars ($2,525) per degree; for each degree of permanent impairment above fifty (50), three thousand two hundred dollars ($3,200) per degree.

(11) With respect to disablements occurring on and after July 1, 2009, and before July 1, 2010, for each degree of permanent

impairment from one (1) to ten (10), one thousand three hundred eighty dollars ($1,380) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred eighty-five dollars ($1,585) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand six hundred dollars ($2,600) per degree; for each degree of permanent impairment above fifty (50), three thousand three hundred dollars ($3,300) per degree.

(12) With respect to disablements occurring on and after July 1, 2010, for each degree of permanent impairment from one (1) to ten (10), one thousand four hundred dollars ($1,400) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand six hundred dollars ($1,600) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand seven hundred dollars ($2,700) per degree; for each degree of permanent impairment above fifty (50), three thousand five hundred dollars ($3,500) per degree.

(m) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections (k) and (l) shall not exceed the following:

(1) With respect to disablements occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars ($492).

(2) With respect to disablements occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars ($540).

(3) With respect to disablements occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars ($591).

(4) With respect to disablements occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars ($642).

(5) With respect to disablements occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars ($672).

(6) With respect to disablements occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars ($702).

(7) With respect to disablements occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars ($732).

(8) With respect to disablements occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars ($762).

(9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars ($822).

(10) With respect to injuries occurring on or after July 1, 2002, and before July 1, 2006, eight hundred eighty-two dollars ($882).

(11) With respect to injuries occurring on or after July 1, 2006, and before July 1, 2007, nine hundred dollars ($900).

(12) With respect to injuries occurring on or after July 1, 2007, and before July 1, 2008, nine hundred thirty dollars ($930).

(13) With respect to injuries occurring on or after July 1, 2008, and before July 1, 2009, nine hundred fifty-four dollars ($954).

(14) With respect to injuries occurring on or after July 1, 2009, nine hundred seventy-five dollars ($975).

(n) If any employee, only partially disabled, refuses employment suitable to the employee's capacity procured for the employee, the employee shall not be entitled to any compensation at any time during the continuance of such refusal unless, in the opinion of the worker's compensation board, such refusal was justifiable. The employee must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board.

(o) If an employee has sustained a permanent impairment or disability from an accidental injury other than an occupational disease in another employment than that in which the employee suffered a subsequent disability from an occupational disease, such as herein specified, the employee shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred. However, if the permanent impairment or disability resulting from an occupational disease for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent impairment from an occupational disease or physical condition regardless of the source or cause of such previously sustained impairment from an occupational disease or physical condition, the board shall determine the extent of the previously sustained permanent impairment from an occupational disease or physical condition as well as the extent of the aggravation or increase resulting from the subsequent permanent impairment or disability, and shall award compensation only for that part of said occupational disease or physical condition resulting from the subsequent permanent impairment. An amputation of any part of the body or loss of any or all of the vision of one (1) or both eyes caused by an occupational disease shall be considered as a permanent impairment or physical condition.

(p) If an employee suffers a disablement from an occupational disease for which compensation is payable while the employee is still receiving or entitled to compensation for a previous injury by accident or disability by occupational disease in the same employment, the employee shall not at the same time be entitled to compensation for both, unless it be for a permanent injury, such as specified in subsection (k)(1), (k)(4), (k)(5), (k)(8), or (k)(9), but the employee shall be entitled to compensation for that disability and from the time of that disability which will cover the longest period and the largest amount payable under this chapter.

(q) If an employee receives a permanent disability from occupational disease such as specified in subsection (k)(1), (k)(4), (k)(5), (k)(8), or (k)(9) after having sustained another such permanent disability in the same employment the employee shall be entitled to compensation for both such disabilities, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation and, when such previous and subsequent permanent disabilities, in combination result in total permanent disability or permanent total impairment, compensation shall be payable for such permanent total disability or impairment, but payments made for the previous disability or impairment shall be deducted from the total payment of compensation due.

(r) When an employee has been awarded or is entitled to an award of compensation for a definite period from an occupational disease wherein disablement occurs on and after April 1, 1963, and such employee dies from other causes than such occupational disease, payment of the unpaid balance of such compensation not exceeding three hundred fifty (350) weeks shall be paid to the employee's dependents of the second and third class as defined in sections 11 through 14 of this chapter and compensation, not exceeding five hundred (500) weeks shall be made to the employee's dependents of the first class as defined in sections 11 through 14 of this chapter.

(s) Any payment made by the employer to the employee during the period of the employee's disability, or to the employee's dependents, which, by the terms of this chapter, was not due and payable when made, may, subject to the approval of the worker's compensation board, be deducted from the amount to be paid as compensation, but such deduction shall be made from the distal end of the period during which compensation must be paid, except in cases of temporary disability.

(t) When so provided in the compensation agreement or in the award of the worker's compensation board, compensation may be paid semimonthly, or monthly, instead of weekly.

(u) When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen (18) years of age do not exceed one hundred dollars ($100), the payment thereof may be made directly to such employee or dependent, except when the worker's compensation board shall order otherwise.

(v) Whenever the aggregate payments of compensation, due to any person under eighteen (18) years of age, exceed one hundred dollars ($100), the payment thereof shall be made to a trustee, appointed by the circuit or superior court, or to a duly qualified guardian, or, upon the order of the worker's compensation board, to a parent or to such minor person. The payment of compensation, due to any person eighteen (18) years of age or over, may be made directly to such person.

(w) If an employee, or a dependent, is mentally incompetent, or a minor at the time when any right or privilege accrues to the employee under this chapter, the employee's guardian or trustee may, in the employee's behalf, claim and exercise such right and privilege.

(x) All compensation payments named and provided for in this section, shall mean and be defined to be for only such occupational diseases and disabilities therefrom as are proved by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the employee.

SECTION 15. IC 22-3-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) During the period of disablement, the employer shall furnish or cause to be furnished, free of charge to the employee, an attending physician for the treatment of his occupational disease, and in addition thereto such surgical, hospital, and nursing services and supplies as the attending physician or the worker's compensation board may deem necessary. If the employee is requested or required by the employer to submit to treatment outside the county of employment, the employer shall also pay the reasonable expense of travel, food, and lodging necessary during the travel, but not to exceed the amount paid at the time of the travel by the state of Indiana to its employees. If the treatment or travel to or from the place of treatment causes a loss of working time to the employee, the employer shall reimburse the employee for the loss of wages using the basis of the employee's average daily wage.

(b) During the period of disablement resulting from the occupational disease, the employer shall furnish such physician, services, and supplies, and the worker's compensation board may, on proper application of either party, require that treatment by such physician and such services and supplies be furnished by or on behalf of the employer

as the board may deem reasonably necessary. After an employee's occupational disease has been adjudicated by agreement or award on the basis of permanent partial impairment and within the statutory period for review in such case as provided in section 27(i) of this chapter, the employer may continue to furnish a physician or a surgeon and other medical services and supplies, and the board may, within such statutory period for review as provided in section 27(i) of this chapter, on a proper application of either party, require that treatment by such physician or surgeon and such services and supplies be furnished by and on behalf of the employer as the board may deem necessary to limit or reduce the amount and extent of such impairment. The refusal of the employee to accept such services and supplies when so provided by or on behalf of the employer, shall bar the employee from all compensation otherwise payable during the period of such refusal and his right to prosecute any proceeding under this chapter shall be suspended and abated until such refusal ceases. The employee must be served with a notice setting forth the consequences of the refusal under this section. The notice must be in a form prescribed by the worker's compensation board. No compensation for permanent total impairment, permanent partial impairment, permanent disfigurement, or death shall be paid or payable for that part or portion of such impairment, disfigurement, or death which is the result of the failure of such employee to accept such treatment, services, and supplies, provided that an employer may at any time permit an employee to have treatment for his disease or injury by spiritual means or prayer in lieu of such physician, services, and supplies.

(c) Regardless of when it occurs, where a compensable occupational disease results in the amputation of a body part, the enucleation of an eye, or the loss of natural teeth, the employer shall furnish an appropriate artificial member, braces, and prosthodontics. The cost of repairs to or replacements for the artificial members, braces, or prosthodontics that result from a compensable occupational disease pursuant to a prior award and are required due to either medical necessity or normal wear and tear, determined according to the employee's individual use, but not abuse, of the artificial member, braces, or prosthodontics, shall be paid from the second injury fund upon order or award of the worker's compensation board. The employee is not required to meet any other requirement for admission to the second injury fund.

(d) If an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital, or nurse's services and supplies or such treatment by spiritual means or prayer as specified

in this section, or for other good reason, a physician other than that provided by the employer treats the diseased employee within the period of disability, or necessary and proper surgical, hospital, or nurse's services and supplies are procured within the period, the reasonable cost of such services and supplies shall, subject to approval of the worker's compensation board, be paid by the employer.

(e) This section may not be construed to prohibit an agreement between an employer and employees that has the approval of the board and that:

(1) binds the parties to medical care furnished by providers selected by agreement before or after disablement; or

(2) makes the findings of a provider chosen in this manner binding upon the parties.

(f) The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under this section. The right to order payment for all services provided under this chapter is solely with the board. All claims by a health care provider for payment for services are against the employer and the employer's insurance carrier, if any, and must be made with the board under this chapter. **A health care provider must file a claim for payment with the board not later than two (2) years after the last date the provider provides services to an employee having a disablement. A filing fee of sixty dollars ($60) must accompany each application for payment.**

SECTION 16. IC 22-3-7-17.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17.2. **(a) Before providing services under this section, an entity must be certified as a billing review service by the worker's compensation board under IC 22-3-13.**

~~(a)~~ **(b)** A billing review service shall adhere to the following requirements to determine the pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under this chapter:

(1) The formation of a billing review standard, and any subsequent analysis or revision of the standard, must use data that is based on the medical service provider billing charges as submitted to the employer and the employer's insurance carrier from the same community. This subdivision does not apply when a unique or specialized service or product does not have sufficient comparative data to allow for a reasonable comparison.

(2) Data used to determine pecuniary liability must be compiled on or before June 30 and December 31 of each year.

(3) Billing review standards must be revised for prospective future payments of medical service provider bills to provide for payment of the charges at a rate not more than the charges made by eighty percent (80%) of the medical service providers during the prior six (6) months within the same community. The data used to perform the analysis and revision of the billing review standards may not be more than two (2) years old and must be periodically updated by a representative inflationary or deflationary factor. Reimbursement for these charges may not exceed the actual charge invoiced by the medical service provider.

(4) The billing review standard shall include the billing charges of all hospitals in the applicable community for the service or product.

~~(b)~~ **(c)** A medical service provider may request an explanation from a billing review service if the medical service provider's bill has been reduced as a result of application of the eightieth percentile or of a Current Procedural Terminology (CPT) coding change. The request must be made not later than sixty (60) days after receipt of the notice of the reduction. If a request is made, the billing review service must provide:

(1) the name of the billing review service used to make the reduction;

(2) the dollar amount of the reduction;

(3) the dollar amount of the medical service at the eightieth percentile; and

(4) in the case of a CPT coding change, the basis upon which the change was made;

not later than thirty (30) days after the date of the request.

~~(c)~~ **(d)** If after a hearing the worker's compensation board finds that a billing review service used a billing review standard that did not comply with subsection ~~(a)(1)~~ **(b)(1)** through ~~(a)(4)~~ **(b)(4)** in determining the pecuniary liability of an employer or an employer's insurance carrier for a health care provider's charge for services or products covered under occupational disease compensation, the worker's compensation board may assess a civil penalty against the billing review service in an amount not less than one hundred dollars ($100) and not more than ~~one~~ **five** thousand dollars ~~($1,000).~~ **($5,000).**

SECTION 17. IC 22-3-7-34.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 34.3. (a) The worker's compensation board is entitled to request that an employer provide**

the board with current proof of compliance with section 34 of this chapter.

(b) If an employer fails or refuses to provide current proof of compliance by the seventh day after the employer receives the board's request under subsection (a), the board may assess a civil penalty against the employer not to exceed one hundred fifty dollars ($150).

(c) If an employer fails or refuses to provide a current proof of compliance by the fourteenth day after the date the employer receives the board's request under subsection (a), the board may assess a civil penalty not to exceed three hundred dollars ($300).

(d) If an employer fails or refuses to provide a current proof of compliance by the twenty-fifth day after the date the employer receives the board's request under subsection (a), the board may:

(1) assess a civil penalty not to exceed one thousand dollars ($1,000); and

(2) after notice to the employer and a hearing, order that the noncompliant employer's name be listed on the board's Internet web site.

(e) The civil penalties provided for in this section are cumulative.

(f) Civil penalties collected under this section shall be deposited in the worker's compensation supplemental administrative fund established by IC 22-3-5-6.

SECTION 18. IC 22-3-7-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 37. (a) Every employer operating under the compensation provisions of this chapter shall keep a record of all disablements by occupational disease, fatal or otherwise, received by ~~his~~ **the employer's** employees in the course of their employment. Within seven (7) days after the occurrence and knowledge thereof, as provided in section 32 of this chapter, of disablement to an employee causing ~~his~~ **the employee's** death or ~~his~~ absence from work for more than one (1) day, a report thereof shall be made in writing and mailed to the employer's insurance carrier or, if the employer is self insured, to the worker's compensation board on blanks to be procured from the board for the purpose. The insurance carrier shall mail the report to the worker's compensation board not later than seven (7) days after receipt or fourteen (14) days after the employer's knowledge of the occurrence, whichever is later. An employer or insurance carrier that fails to comply with this subsection is subject to a civil penalty ~~of fifty dollars ($50), to be assessed and collected by the board. Civil penalties collected under this section shall be deposited in~~

~~the state general fund.~~ **under IC 22-3-4-15.**

(b) The report shall contain the name, nature and location of the business of the employer, the name, age, sex, wages, occupation of the employee, the approximate dates between which exposure occurred, the nature and cause of the occupational disease, and such other information as may be required by the board.

(c) A person who violates this section commits a Class C infraction.

(d) The venue of all criminal actions for the violation of this section lies in the county in which the employee was last exposed to the occupational disease causing disablement. The prosecuting attorney of the county shall prosecute these violations upon written request of the worker's compensation board. These shall be prosecuted in the name of the state.

SECTION 19. IC 22-3-13 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 13. Billing Review Service Certification

Sec. 1. This chapter applies to a person or entity that reviews a medical service provider's bills or statements for the purpose of determining the pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under worker's compensation or occupational diseases compensation.

Sec. 2. (a) After December 31, 2009, a billing review service may not determine the pecuniary liability of an employer or an employer's insurance carrier unless the billing review service holds a certificate of registration issued by the board under this chapter.

(b) To obtain a certificate of registration under this chapter, the billing review service must submit to the board an application containing the following:

(1) The name, address, telephone number, and normal business hours of the billing review service.

(2) The name and telephone number of a person that the board may contact concerning the information in the application.

(3) Documentation necessary for the board to determine that the billing review service is capable of adhering to the requirements set forth in IC 22-3-3-5.2 and IC 22-3-7-17.2.

(4) Other information as specified by the board.

(c) An application submitted under this section must be:

(1) signed and verified by the applicant; and

(2) accompanied by an application fee in the amount

established under subsection (d).

(d) The board shall set the amount of the application fee required by subsection (c) and the registration renewal fee required by section 3(a) of this chapter in the rules adopted under section 6 of this chapter. The amount may not be more than is reasonably necessary to generate revenue sufficient to offset the costs incurred by the board in carrying out its responsibilities under this chapter.

(e) The board shall deposit an application fee collected under this section in the worker's compensation supplemental administrative fund established by IC 22-3-5-6.

(f) The board shall issue a certificate of registration to a billing review service that satisfies the requirements of this section.

Sec. 3. (a) A certificate of registration issued under this chapter must be renewed not later than June 30 each year to remain in effect. To renew a certificate of registration, a billing review service must submit to the board an application accompanied by a registration renewal fee in an amount set under section 2(d) of this chapter. The board shall deposit a registration renewal fee collected under this section in the worker's compensation supplemental administrative fund established by IC 22-3-5-6.

(b) A certificate of registration issued under this chapter may not be transferred unless the board determines that the person to which the certificate of registration is to be transferred satisfies the requirements of this chapter.

(c) When a material change in any of the information set forth in an application submitted under this chapter occurs, the billing review service that submitted the application shall notify the board of the change in writing not more than thirty (30) days after the change occurs.

Sec. 4. The compensation of a billing review service:

(1) must be fee based; and

(2) may not be based on the amount by which claims are reduced for payment.

Sec. 5. (a) If the board believes that a billing review service has violated this chapter, the board shall notify the billing review service of the alleged violation.

(b) The billing review service shall respond to a notice provided under subsection (a) not later than thirty (30) days after receiving the notice.

(c) If the board:

(1) believes that a billing review service has violated this

chapter; and

(2) is not satisfied, based on the response given by the billing review service under subsection (b), that the violation has been corrected;

the board shall order the billing review service under IC 4-21.5-3-6 to cease all billing review activities in Indiana.

(d) If the board determines that a billing review service has violated this chapter, the board:

(1) shall order the billing review service to cease and desist from engaging in the violation; and

(2) may do either or both of the following:

(A) Order the billing review service to pay a civil penalty of not more than five thousand dollars ($5,000), if the billing review service has committed violations with a frequency that indicates a general business practice.

(B) Suspend or revoke the certificate of registration of the billing review service.

(e) An order issued or a ruling made by the board under this section is subject to review under IC 4-21.5.

(f) Civil penalties collected under subsection (d)(2)(A) shall be deposited in the worker's compensation supplemental administrative fund established by IC 22-3-5-6.

Sec. 6. The board shall adopt rules under IC 4-22-2 necessary to carry out this chapter.

SECTION 20. [EFFECTIVE JULY 1, 2009] **IC 22-3-3-5.2(d) and IC 22-3-7-17.2(d), both as amended by this act, apply to determinations of the worker's compensation board made after June 30, 2009.**

SECTION 21. [EFFECTIVE JULY 1, 2009] **IC 22-3-6-1 and IC 22-3-7-9, both as amended by this act, apply to charges for services provided by a medical services facility after December 31, 2009.**

SECTION 22. **An emergency is declared for this act.**

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 559, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 13, delete lines 12 through 25.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 559 as introduced.)

KRUSE, Chairperson

Committee Vote: Yeas 9, Nays 0.